

Presidential Documents

Executive Order 13868 of April 10, 2019

Promoting Energy Infrastructure and Economic Growth

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. The United States is blessed with plentiful energy resources, including abundant supplies of coal, oil, and natural gas. Producers in America have demonstrated a remarkable ability to harness innovation and to cost-effectively unlock new energy supplies, making our country a dominant energy force. In fact, last year the United States surpassed production records set nearly 5 decades ago and is in all likelihood now the largest producer of crude oil in the world. We are also the world's leading producer of natural gas, and we became a net exporter in 2017 for the first time since 1957. The United States will continue to be the undisputed global leader in crude oil and natural gas production for the foreseeable future.

These robust energy supplies present the United States with tremendous economic opportunities. To fully realize this economic potential, however, the United States needs infrastructure capable of safely and efficiently transporting these plentiful resources to end users. Without it, energy costs will rise and the national energy market will be stifled; job growth will be hampered; and the manufacturing and geopolitical advantages of the United States will erode. To enable the timely construction of the infrastructure needed to move our energy resources through domestic and international commerce, the Federal Government must promote efficient permitting processes and reduce regulatory uncertainties that currently make energy infrastructure projects expensive and that discourage new investment. Enhancing our Nation's energy infrastructure, including facilities for the transmission, distribution, storage, and processing of energy resources, will ensure that our Nation's vast reserves of these resources can reach vital markets. Doing so will also help families and businesses in States with energy constraints to access affordable and reliable domestic energy resources. By promoting the development of new energy infrastructure, the United States will make energy more affordable, while safeguarding the environment and advancing our Nation's economic and geopolitical advantages.

Sec. 2. Policy. It is the policy of the United States to promote private investment in the Nation's energy infrastructure through:

- (a) efficient permitting processes and procedures that employ a single point of accountability, avoid duplicative and redundant studies and reviews, and establish clear and reasonable timetables;
- (b) regulations that reflect best practices and best-available technologies;
- (c) timely action on infrastructure projects that advance America's interests and ability to participate in global energy markets;
- (d) increased regulatory certainty regarding the development of new energy infrastructure;
- (e) effective stewardship of America's natural resources; and
- (f) support for American ingenuity, the free market, and capitalism.

Sec. 3. Water Quality Certifications. Section 401 of the Clean Water Act (33 U.S.C. 1341) provides that States and authorized tribes have a direct role in Federal permitting and licensing processes to ensure that activities

subject to Federal permitting requirements comply with established water quality requirements. Outdated Federal guidance and regulations regarding section 401 of the Clean Water Act, however, are causing confusion and uncertainty and are hindering the development of energy infrastructure.

(a) The Administrator of the Environmental Protection Agency (EPA) shall consult with States, tribes, and relevant executive departments and agencies (agencies) in reviewing section 401 of the Clean Water Act and EPA's related regulations and guidance to determine whether any provisions thereof should be clarified to be consistent with the policies described in section 2 of this order. This review shall include examination of the existing interim guidance entitled, "Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes" (Section 401 Interim Guidance). This review shall also take into account federalism considerations underlying section 401 of the Clean Water Act and shall focus on:

- (i) the need to promote timely Federal-State cooperation and collaboration;
- (ii) the appropriate scope of water quality reviews;
- (iii) types of conditions that may be appropriate to include in a certification;
- (iv) expectations for reasonable review times for various types of certification requests; and
- (v) the nature and scope of information States and authorized tribes may need in order to substantively act on a certification request within a prescribed period of time.

(b) Upon completion of the consultation and review process described in subsection (a) of this section, but no later than 60 days after the date of this order, the Administrator of the EPA shall:

- (i) as appropriate and consistent with applicable law, issue new guidance to States and authorized tribes to supersede the Section 401 Interim Guidance to clarify, at minimum, the items set forth in subsection (a) of this section; and
- (ii) issue guidance to agencies, consistent with the policies outlined in section 2 of this order, to address the items set forth in subsection (a) of this section.

(c) Upon completion of the consultation and review process described in subsection (a) of this section, but no later than 120 days after the date of this order, the Administrator of the EPA shall review EPA's regulations implementing section 401 of the Clean Water Act for consistency with the policies set forth in section 2 of this order and shall publish for notice and comment proposed rules revising such regulations, as appropriate and consistent with law. The Administrator of the EPA shall finalize such rules no later than 13 months after the date of this order.

(d) Upon completion of the processes described in subsection (b) of this section, the Administrator of the EPA shall lead an interagency review, in coordination with the head of each agency that issues permits or licenses subject to the certification requirements of section 401 of the Clean Water Act (401 Implementing Agencies), of existing Federal guidance and regulations for consistency with EPA guidance and rulemaking. Within 90 days of completion of the processes described in subsection (b) of this section, the heads of the 401 Implementing Agencies shall update their respective agencies' guidance. Within 90 days of completion of the processes described in subsection (c) of this section, if necessary, the heads of each 401 Implementing Agency shall initiate a rulemaking to ensure their respective agencies' regulations are consistent with the rulemaking described in subsection (c) of this section and with the policies set forth in section 2 of this order.

Sec. 4. Safety Regulations. (a) The Department of Transportation's safety regulations for Liquefied Natural Gas (LNG) facilities, found in 49 CFR part 193 (Part 193), apply uniformly to small-scale peakshaving, satellite, temporary, and mobile facilities, as well as to large-scale import and export terminals. Driven by abundant supplies of domestic natural gas, new LNG

export terminals are in various stages of development, and these modern, large-scale liquefaction facilities bear little resemblance to the small peakshaving facilities common during the original drafting of Part 193 nearly 40 years ago. To achieve the policies set forth in subsection 2(b) of this order, the Secretary of Transportation shall initiate a rulemaking to update Part 193 and shall finalize such rulemaking no later than 13 months after the date of this order. In developing the proposed regulations, the Secretary of Transportation shall use risk-based standards to the maximum extent practicable.

(b) In the United States, LNG may be transported by truck and, with approval by the Federal Railroad Administration, by rail in United Nations portable tanks, but Department of Transportation regulations do not authorize LNG transport in rail tank cars. The Secretary of Transportation shall propose for notice and comment a rule, no later than 100 days after the date of this order, that would treat LNG the same as other cryogenic liquids and permit LNG to be transported in approved rail tank cars. The Secretary shall finalize such rulemaking no later than 13 months after the date of this order.

Sec. 5. Environment, Social, and Governance Issues; Proxy Firms; and Financing Energy Projects Through the United States Capital Markets. (a) The majority of financing in the United States is conducted through its capital markets. The United States capital markets are the deepest and most liquid in the world. They benefit from decades of sound regulation grounded in disclosure of information that, under an objective standard, is material to investors and owners seeking to make sound investment decisions or to understand current and projected business. As the Supreme Court held in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976), information is “material” if “there is a substantial likelihood that a reasonable shareholder would consider it important.” Furthermore, the United States capital markets have thrived under the principle that companies owe a fiduciary duty to their shareholders to strive to maximize shareholder return, consistent with the long-term growth of a company.

(b) To advance the principles of objective materiality and fiduciary duty, and to achieve the policies set forth in subsections 2(c), (d), and (f) of this order, the Secretary of Labor shall, within 180 days of the date of this order, complete a review of available data filed with the Department of Labor by retirement plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) in order to identify whether there are discernible trends with respect to such plans’ investments in the energy sector. Within 180 days of the date of this order, the Secretary shall provide an update to the Assistant to the President for Economic Policy on any discernable trends in energy investments by such plans. The Secretary of Labor shall also, within 180 days of the date of this order, complete a review of existing Department of Labor guidance on the fiduciary responsibilities for proxy voting to determine whether any such guidance should be rescinded, replaced, or modified to ensure consistency with current law and policies that promote long-term growth and maximize return on ERISA plan assets.

Sec. 6. Rights-of-Way Renewals or Reauthorizations. The Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce approve rights-of-way for energy infrastructure through lands owned by or within the jurisdiction or control of the United States. Energy infrastructure rights-of-way grants, leases, permits, and agreements routinely include sunset provisions. Operating facilities in expired rights-of-way creates legal and operational uncertainties for owners and operators of energy infrastructure. To achieve the policies set forth in section 2 of this order, the Secretaries of the Interior, Agriculture, and Commerce shall:

(a) develop a master agreement for energy infrastructure rights-of-way renewals or reauthorizations; and

(b) within 1 year of the date of this order, initiate renewal or reauthorization processes for all expired energy rights-of-way grants, leases, permits, and

agreements, as determined to be appropriate by the applicable Secretary and to the extent permitted by law.

Sec. 7. Reports on the Barriers to a National Energy Market. (a) Within 180 days of the date of this order, the Secretary of Transportation, in consultation with the Secretary of Energy, shall submit a report to the President, through the Assistant to the President for Economic Policy, regarding the economic and other effects caused by the inability to transport sufficient quantities of natural gas and other domestic energy resources to the States in New England and, as the Secretary of Transportation deems appropriate, to States in other regions of the Nation. This report shall assess whether, and to what extent, State, local, tribal, or territorial actions have contributed to such effects.

(b) Within 180 days of the date of this order, the Secretary of Energy, in consultation with the Secretary of Transportation, shall submit a report to the President, through the Assistant to the President for Economic Policy, regarding the economic and other effects caused by limitations on the export of coal, oil, natural gas, and other domestic energy resources through the west coast of the United States. This report shall assess whether, and to what extent, State, local, tribal, or territorial actions have contributed to such effects.

Sec. 8. Report on Intergovernmental Assistance. State and local governments play a vital role in supporting energy infrastructure development through various transportation, housing, and workforce initiatives, and through other policies and expenditures. The Federal Government is, in many cases, well positioned to provide intergovernmental assistance to State and local governments. To achieve the policies set forth in section 2 of this order, the heads of agencies shall review existing authorities related to the transportation and development of domestically produced energy resources and, within 30 days of the date of this order, report to the Director of the Office of Management and Budget and the Assistant to the President for Economic Policy on how those authorities can be most efficiently and effectively used to advance the policies set forth in this order.

Sec. 9. Report on Economic Growth of the Appalachian Region. Within 180 days of the date of this order, the Secretary of Energy, in consultation with the heads of other agencies, as appropriate, shall submit a report to the President, through the Assistant to the President for Economic Policy, describing opportunities, through the Federal Government or otherwise, to promote economic growth of the Appalachian region, including growth of petrochemical and other industries. This report also shall assess methods for diversifying the Appalachian economy and promoting workforce development.

Sec. 10. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be a stylized 'J' or a similar character, followed by a series of vertical and horizontal strokes.

THE WHITE HOUSE,
April 10, 2019.

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